



April 22, 2002

Chief Don Hatcher  
Leander Police Department  
P.O. Box 319  
Leander, Texas 78646-0319

OR2002-2041

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161636.

The City of Leander (the "city") received a written request for records pertaining to suicides and attempted suicides that occurred in the year 2001. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Because your section 552.108 claims are the more inclusive, we will address the applicability of this exception first. You contend that the requested information is excepted from disclosure under section 552.108 because the information contains "investigative information . . . combined with police investigative methods and if released, could hinder this **pending investigation or future investigations**." (Emphasis in original.) We infer from these arguments that you intended to raise sections 552.108(a)(1) and 552.108(b)(1) of the Government Code.

Section 552.108(b)(1) of the Government Code provides an exception to required public disclosure for an internal record of a law-enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." To withhold internal records and notations of law enforcement agencies and prosecutors under section 552.108(b)(1), a governmental body must demonstrate how release of the information would interfere with law enforcement and crime prevention unless the records supplied this explanation on their face. *See Open Records Decision No. 508 at 2 (1988)*. After reviewing the submitted records, we conclude that you have not adequately explained, nor could this office discern,

how the release of the submitted information would interfere with the city's law enforcement efforts. Consequently, none of the submitted information may be withheld pursuant to section 552.108(b)(1).

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because it is presumed that the release of such information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). Our review of the materials you submitted to this office reveal that the investigations pertaining to Incident Report Nos. 23913 and 26575 are pending. We therefore conclude that the city may withhold most of the information contained in these two reports pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108, however, does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The city must therefore release to the requestor all basic information contained in these two incident reports, with the following exception.

Incident Report No. 23913 concerns an alleged suicide attempt. In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977), the Texas Supreme Court specifically held that information that relates to an attempted suicide is excepted from public disclosure pursuant to common-law privacy in conjunction with the statutory predecessor to section 552.101 of the Government Code.<sup>1</sup> *Id.* at 683. Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Id.* at 683-85. But see *Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.) (right of privacy is purely personal and lapses upon death); see also Attorney General Opinions JM-229 (1984); H-917 (1976).

In this instance, we conclude that there is no legitimate public interest in the identity of the individual who allegedly attempted suicide. Accordingly, we have marked the information

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<sup>1</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

in Incident Report No. 23913 that the city must withhold in order to protect the identity of that individual. The remaining basic information in Incident Report No. 23913, as well as all of the basic information in Incident Report No. 26575, must be released to the requestor.

Because you have not demonstrated that the remaining incident reports come within the protection of section 552.108, we must address the extent to which those reports are protected under the other exception you raise, section 552.101 of the Government Code in conjunction with the common-law right of privacy. All of the remaining incident reports concern alleged attempted suicides. In light of the discussion above, we conclude that all information tending to identify those who allegedly attempted to commit suicide must be withheld on privacy grounds. We have marked the documents accordingly. The remaining information in these reports must be released to the requestor, with the following exceptions.

We note that some of the incident reports contain individuals' social security numbers. This office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. However, this office has no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the city should ensure that these numbers were not obtained and are not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that some of the incident reports contain information that must be withheld pursuant to section 552.130(a)(1) of the Government Code, which requires the city to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the city must withhold all Texas driver's license numbers and all Texas license plate numbers pursuant to section 552.130 of the Government Code.

To summarize, the only reports that the city may withhold pursuant to section 552.108 are Incident Reports Nos. 23913 and 26575. The city must release, however, all "basic information" from both of these reports except for the information we have marked in Incident Report No. 23913 as coming within the common-law right of privacy. The city must release the remaining submitted incident reports in their entirety except for 1) the

information we have marked as being protected by common-law privacy, 2) social security numbers made confidential by federal law, 3) Texas driver's license numbers, and 4) Texas license plate numbers.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/RWP/sdk

Ref: ID# 161636

Enc: Marked documents

c: Mr. Mike Halligan  
Executive Director  
Texas Mental Health Consumers  
7710 N. Lamar Boulevard, Suite 500  
Austin, Texas 75752  
(w/o enclosures)